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IN THE

Supreme Court of the United States

APRIL TERM 1973

No.

HAROLD R. PLUMMER,

Appellant

v.

CITY OF COLUMBUS, OHIO,

Appellee

On Appeal from the Supreme Court of Ohio

MOTION TO DISMISS

OPINIONS BELOW

None of the opinions below are reported in an official reporter at this time. All of the opinions below are included within the Appendix of Appellant's Jurisdictional Statement.

JURISDICTION

The jurisdictional requisites are adequately set forth in Appellant's Jurisdictional Statement.

QUESTION PRESENTED

The sole question presented is the constitutionality of Section 2327.03 of the General Offense Code of the City of Columbus, Ohio.

STATEMENT OF THE CASE

Appellant was arrested on February 10, 1972, in Columbus, Ohio, on a charge of improper language under Section 2327.03 of the Columbus City Code. The case came before the Honorable Bruce Jenkins, Judge of the Franklin County Municipal Court, on the 5th day of May, 1972. Appellant was found guilty of violations of the City Ordinance by the Court.

Appellant's conviction was affirmed by the Court of Appeals of Franklin County, Ohio and the subsequent appeal to the Supreme Court of Ohio was dismissed for the reason that no substantial constitutional question exists.

ARGUMENT

There Is No Substantial Federal Question Presented

In considering a New Hampshire statute similar to the ordinance in the present case, the Court in *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942), upheld a conviction because of the narrow construction the New Hampshire Court placed on the statute limiting prosecution under it to a very narrowly defined class of speech, to-wit "fighting words". The *Chaplinsky* fighting words doctrine has been recently reaffirmed by the Court in numerous decisions, including *Gooding, Warden v. Wilson*, 405 U.S. 518 (1972), *Brown v. Oklahoma*, 408 U.S. 914 (1972), *Lewis v. City of New Orleans*, 408 U.S. 913 (1972).

In the instant case, the Franklin County Court of Appeals limited the application of the statute in question by specifically finding that the words uttered by Appel-

lant were those envisioned by the Court in *Chaplinsky*, supra, and its progeny. In its opinion, the Court of Appeals stated:

> "We conclude further that the words as used by the defendant-appellant herein are in the nature of "fighting words" and thereby fall within that limit of conduct proscribed by the ordinance, following *Chaplinsky v. New Hampshire* (1942), 315 U.S. 568, and *Gooding v. Wilson* (1972), 92 S. Ct. 1103."

While Section 2327.03 of the Columbus City Code was ir.volved in the recent decision of this Court in *Cason v. City of Columbus*, 409 U.S. 053 (Dec. 11, 1972) wherein the Court reversed a conviction for using improper language citing *Gooding, Warden v. Wilson*, 405 U.S. 518 (1972), the Court made no specific declaration concerning the constitutionality of this ordinance. Subsequent to that decision, the Ohio Supreme Court dismissed the appeal in the present case. The City's brief submitted to the Ohio Supreme Court requesting the dismissal noted the limited application given the statute by the Court of Appeals which distinguishes the present case from *Cason*, supra.

Further, in light of *Cason*, supra, being remanded to the Ohio Supreme Court for further proceedings, it is presumed that the state is to be permitted to settle its own law to accord with the recent decisions of this Court requiring the narrow and limited construction and application to be given the statute in question in all cases.

CONCLUSION

By reason of the narrow application of Section 2327.03 of the Columbus City Code by the Ohio Courts in the instant case to satisfy the requirements of *Chaplinsky v. New Hampshire*, supra, and its progeny, Appellee respectfully submits that this appeal be dismissed as not presenting any substantial federal question.

Respectfully submitted,
JAMES J. HUGHES, JR.
DANIEL W. JOHNSON
WALTER C. BOYUK
Attorneys for Appellee

CERTIFICATE OF SERVICE

We hereby certify that on this 6th day of July, 1973, three copies of the foregoing Motion to Dismiss on Appeal from the Supreme Court of Ohio were mailed, postage prepaid to Mr. Roger C. Stridsberg, Counsel for Appellant, at 8 East Broad Street, 11th Floor, Columbus, Ohio 43215. We further certify that all parties required to be served have been served.

JAMES J. HUGHES, JR.,
City Attorney
DANIEL W. JOHNSON,
City Prosecutor
WALTER C. BOYUK,
Assistant City Prosecutor
90 West Broad Street
Columbus, Ohio 43215
Attorneys for Appellee